MONTANA LEGISLATIVE HISTORY

Chapter 364 19 77

Bill H 795 S _____ Original bill & history ✓ c

H. Committee on State Admin			S. Committee on State Admin.		
Hearing Date(s) h	2/16 nothing	c	Hearing Date(s) h	3/26	c
	Judiciary	c			c
hr	2/23	c			c
v	2/24	c			c
Date Out		c			c

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

House BILL NO. 795

INTRODUCED BY Bardanouve Melby Swift

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE MONTANA RECALL AND ADVISORY RECALL ACT, INITIATIVE NO. 73, TO CLARIFY THE SCOPE OF ITS APPLICATION, TO SPECIFY GROUNDS FOR RECALL, TO ESTABLISH MORE DEFINED RESPONSIBILITIES ON THE PART OF PETITIONERS, TO CORRECT AND CLARIFY CERTAIN ADMINISTRATIVE PROVISIONS OF THE ACT, TO REMOVE ADVISORY RECALL PROCEDURES FOR U. S. DISTRICT JUDGES, TO REMOVE THE APPLICATION OF THE ACT TO REPRESENTATIVES IN CONGRESS, TO CORRECT CERTAIN ERRORS IN FORM, AND TO REPEAL CONFLICTING STATUTES; AMENDING SECTIONS 1, 2, 4, 7, 8, 10, 11, 13, 15, 16, 17, AND 19 OF THE MONTANA RECALL AND ADVISORY RECALL ACT; AND REPEALING SECTIONS 11-721.1, 11-3132, 11-3220, AND 11-3540, R.C.M. 1947, AND SECTIONS 20, 21, 22, 23, AND 24 OF THE MONTANA RECALL AND ADVISORY RECALL ACT."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. There is a new R.C.M. section that reads as follows:

Definitions. As used in the Montana Recall Act, the following definitions apply:

(1) "Public office" means a position of duty, trust, or authority created by the constitution or by the legislature or by a political subdivision through authority conferred by the constitution or the legislature that meets the following criteria:

(a) the position must possess a delegation of a portion of the sovereign power of government to be exercised for the benefit of the public;

(b) the powers conferred and the duties to be discharged must be defined, directly or impliedly, by the constitution, the legislature, or by a political subdivision through legislative authority;

(c) the duties must be performed independently and without control of a superior power other than the law, unless the legislature has created the position and placed it under the general control of a superior office or body; and

(d) the position must have some permanency and continuity and not be only temporary or occasional.

(2) "Political subdivision" means a local government unit including but not limited to a county, city, or town established under authority of Article XI, section 1, of The Constitution of the State of Montana or a school district.

(3) "State-district" means a public service commission district, a legislative representative or senatorial district, or a judicial district.

Section 2. Section 1 of the Montana Recall and

Advisory Recall Act, Initiative No. 73, is amended to read as follows:

"Section 1. Short title. This act shall be ~~known and~~ cited as the "Montana Recall ~~And Advisory Recall~~ Act"."

Section 3. Section 2 of the Montana Recall and Advisory Recall Act, Initiative No. 73, is amended to read as follows:

"Section 2. Officers subject to recall. (1) Every person holding a public office of the state or any of its political subdivisions, either by election or appointment, is subject to recall from such office ~~by the qualified electors of the state or political subdivision~~.

(2) A public officer holding an elective office may be recalled by the qualified electors entitled to vote for his successor. A public officer holding an appointive office may be recalled by the qualified electors entitled to vote for the successor or successors of the elective officer or officers who have the authority to appoint a person to that position. ~~Any reason causing the electorate dissatisfaction with a public official shall be sufficient grounds for recall, notwithstanding good faith attempts to perform the duties of his office.~~

(3) Physical or mental lack of fitness, incompetence, neglect of duty, or conviction of a crime enumerated in Title 94 is the only basis for recall. No person may be

recalled for performing a mandatory duty of the office he holds or for not performing any act that, if performed, would subject him to prosecution for official misconduct."

Section 4. Section 4 of the Montana Recall and Advisory Recall Act, Initiative No. 73, is amended to read as follows:

"Section 4. Number of electors required for recall petition. A recall petition ~~shall~~ may not name more than one officer to be recalled. Recall petitions for elected or appointed state officers shall contain the signatures of qualified electors equalling at least ~~ten percent (10%)~~ of the number of persons ~~voting~~ registered to vote at the preceding state general election. A petition for the recall of a state district officer must contain the signatures of qualified electors equalling at least 15% of the number of persons registered to vote in the last preceding election in that district. Recall petitions for elected or appointed county officers shall contain the signatures of qualified electors equalling at least ~~fifteen percent (15%)~~ of the number of persons ~~voting~~ registered to vote at the preceding county general election. Recall petitions for elected or appointed officers of ~~cities, towns,~~ municipalities or ~~other political subdivisions of the state~~ school districts shall contain the signatures of qualified electors equalling at least ~~twenty percent (20%)~~ of the number of persons ~~voting~~

registered to vote at the preceding general election for the ~~city, town~~ municipality or ~~other political subdivision~~ school district."

Section 5. Section 7 of the Montana Recall and Advisory Recall Act, Initiative No. 73, is amended to read as follows:

"Section 7. Form of recall petition. (1) The form of the recall petition shall be substantially as follows:

WARNING

A person who knowingly signs a name other than his own to this petition or who signs his name more than once upon a petition to recall the same officer at one election or who is not, at the time he signs this petition, a qualified elector of the state of Montana entitled to vote for the successor of the elected officer to be recalled or the successor or successors of the officer or officers who have the authority to appoint a person to the position held by the appointed officer to be recalled is punishable by a fine of no more than $500 or imprisonment in the county jail for a term not to exceed 6 months, or both, or imprisonment in the state prison for a term not to exceed 10 years, or both.

RECALL PETITION

To the Honorable ....., Secretary of State ~~for~~ of the State of Montana (or name and office of other filing

officer)~~,~~: We, the undersigned ~~citizens and~~ qualified electors of the State of Montana (or name of appropriate state district or political subdivision) respectfully ~~demand~~ petition that an election be held as provided by law on the question of whether ....., holding the office of ....., should be recalled for the following reasons~~, to wit:~~ (Setting out a general statement of the reasons for recall in not more than 200 words). ~~That a special election therefore be called; that we, each for himself, say,~~ By his signature each signer certifies: I have personally signed this petition; I am a qualified elector of the ~~State~~ state of Montana ~~for~~ and (name of appropriate political subdivision); and my residence and post office address are correctly written after my name to the best of my knowledge and belief.

~~A recall petition shall contain a general statement of not more than two hundred (200) words stating the reason for recall. Such a statement is solely for information of the electors and set forth any reason causing the dissatisfaction with the public official and may be political rather than legal in nature.~~

(2) Numbered lines shall follow the above heading. Each numbered line shall contain spaces for the signature, post-office address, and printed last name of the signer. Each separate sheet of the petition shall contain the

heading and reasons for the proposed recall as prescribed above."

Section 6. Section 8 of the Montana Recall and Advisory Recall Act, Initiative No. 73, is amended to read as follows:

"Section 8. Form of circulation sheets. (1) The signatures on each petition shall be placed on sheets of paper known as "circulation sheets", ~~substantially fourteen inches long and eight and one-half inches wide.~~ Each circulation sheet shall be substantially 8 1/2 x 14 inches or a continuous sheet may be folded so as to meet this size limitation. Such circulation sheets shall be ruled with a horizontal line one and one-half inches from the top thereof. The space above such line shall remain blank and shall be for the purpose of binding. ~~The circulation sheet shall be vertically divided into two columns. The first column shall be three and one-half inches in width, measured from the left edge of the sheet, and shall be for the purpose of containing the signatures. The second column shall encompass the remainder of the width of the sheet and shall be the space on which shall be placed the post office address of the signers, together with the street number, if the residence of a signer can be so designated, and the address of such signer shall be opposite his name on the same line.~~

~~At the top of each sheet, under the one and one-half inch margin, shall be printed the word "Warning", under which shall be printed in eight point type, single leaded, the following:~~

~~Warning:~~

~~Any person signing any name other than his own to this petition or signing the same more than once of the same measure at one election or who is not, at the time of signing the same, a qualified elector of the state, is punishable by a fine not exceeding five hundred dollars ($500) or imprisonment in the penitentiary not exceeding two (2) years, or both such fine and imprisonment.~~

(2) The petition, for purposes of circulation, may be divided into sections, each section to contain not more than ~~twenty-five~~ 25 circulation sheets. ~~No section, however, shall be circulated for signatures unless it has attached to the front sheet thereof a certified petition copy. The sponsors shall set out in their application for petition copies the number of sections into which each petition is to be divided for circulation, and the number of circulation sheets which it is desired that each section shall contain, but there need be no uniformity as to the number of circulation sheets contained in each section.~~

(3) Before a petition may be circulated for signatures, a sample circulation sheet must be submitted to

the officer with whom the petition must be filed in the form in which it will be circulated. The filing officer shall review the petition for sufficiency as to form and approve or reject the form of the petition, stating his reasons therefor, within 1 week of receiving the sheet.

(4) The petition form submitted must be accompanied by a written statement containing the reasons for the desired recall as stated on the petition. The truth of purported facts contained in the statement shall be sworn to by at least one of the petitioners before a person authorized to administer oaths.

(5) The filing officer shall serially number all approved petitions continuously from year to year."

Section 7. Section 10 of the Montana Recall and Advisory Recall Act, Initiative No. 73, is amended to read as follows:

"Section 10. Who may petition -- false signatures -- penalties. Every person who is a qualified elector of this state may sign a petition for recall of a state officer. Every person who is a qualified elector of a district of the state from which a state district officer is elected may sign a petition for recall of a state district officer of that district or appointed by an officer or the officers of that election district. Every person who is a qualified elector of a political subdivision of this state may sign a

petition for recall of an officer of that political subdivision. However, if a political subdivision is divided into election districts, a person must be a qualified elector in the election district to be eligible to sign a petition to recall an officer elected from that election district. Any person signing any name other than his own to any petition, or knowingly signing his name more than once for the recall, or who is not at the time of the signing the same a qualified elector or any officer or person who knowingly and wilfully violating any provision of this section, shall be punished by a fine not to exceed Five Hundred Dollars ($500), or by imprisonment in the state penitentiary not to exceed Two (2) years, or by both makes a false entry upon an affidavit required in connection with the filing of a petition for the recall of an officer is guilty of unsworn falsification or tampering with public records or information, as appropriate, and is punishable as provided in 94-7-204 or 94-7-209, as applicable."

Section 8. There is a new R.C.M. section that reads as follows:

Submission of circulation sheets -- certification of signatures. (1) Signed circulation sheets or sections of a petition for recall must be submitted to the officer responsible for registration of electors in the county in which the signatures were obtained within 3 months of the

date the form of the petition was approved under [section 8 of the Montana Recall Act, as amended].

(2) An affidavit, in substantially the following form, shall be attached to each circulation sheet or section submitted to the county officer:

(Name of person circulating petition), being first sworn, deposes and says: I circulated or assisted in circulating the petition to which this affidavit is attached, and I believe the signatures thereon are genuine, are the signatures of the persons whose names they purport to be, and that the signers knew the contents of the petition before signing the same.

..... (Signature)

Subscribed and sworn before me this .... day of ....., 19...

..... (Person authorized to take oaths)

Seal ..... (Title or notarial information)

Section 9. Section 11 of the Montana Recall and Advisory Recall Act, Initiative No. 73, is amended to read as follows:

"Section 11. County clerk to verify signatures. (1) The county clerk in each county in which such a petition is signed shall compare the signatures of the electors in such county with registration signatures on file in such clerk's office, and, if satisfied the signatures are genuine,

certify that fact to the ~~official~~ officer with whom the recall petition ~~was~~ is to be filed, ~~as follows~~ in substantially the following form:

~~State of Montana)~~

~~: ss~~

~~County of)~~

To the Honorable ....., Secretary of State of the State of Montana (or name and title of other officer):

I, ..., ~~Clerk in and for~~ ..... (title) of ..... County~~, do hereby~~ certify that I have compared the signatures on ..... sheets (specifying number of sheets) of the petition for recall No. ..... attached ~~hereto~~ with the signatures of the registered voters as they appear upon the registration ~~forms, books and~~ records of my office, and ~~from such information as I have been able to obtain~~ I believe ~~the~~ ..... (number) signatures~~, numbering .....~~ are ~~genuine~~ valid for the purpose of the petition. ~~As to the remainder of the signatures thereon, I believe they are not genuine, except that the following names (.....) do not appear on the registration forms, books and records in my office.~~

~~..... County Clerk~~

~~(Seal of Office)~~ ~~By.....~~

~~Deputy Clerk~~

I further certify that the affidavit of the circulator of

the (sheet) (section) of the petition is attached and that the post-office address is completed for each valid signature.

Signed: ..... (Date) ..... (Signature)

Seal ..... (Title)

(2) Every such certificate shall be prima facie evidence of the facts stated therein and of the qualifications of the registered voters whose signatures are certified, and the secretary of state, or other ~~official~~ officer receiving the recall petition shall consider and count only such signatures as are certified; provided, that the ~~secretary of state, or city clerk or town clerk~~ officer with whom the recall petition is filed shall consider and ~~county~~ count any remaining signatures of the registered voters which prove to be genuine and such signatures shall be considered and counted if they are attested to in the manner and form as provided for initiative and referendum petitions.

(3) The county clerk ~~shall~~ may not retain any petition or any part of it for more than ~~fifteen (15)~~ days. At the expiration of such period the county clerk shall deliver the same to the person ~~from whom it was received with such clerk's certification~~ with whom the petition is required to be filed."

Section 10. Section 13 of the Montana Recall and

Advisory Recall Act, Initiative No. 73, is amended to read as follows:

"Section 13. Resignation of ~~official~~ officer -- proclamation of election. If the officer named in the petition for recall submits his resignation in writing ~~such officer's resignation~~, it shall be accepted and become effective the day it is offered. The vacancy created by such resignation shall be filled as provided by law, provided that the ~~official~~ officer named in the petition for recall ~~shall~~ may not be appointed to fill such vacancy. If the officer named in the petition for recall refuses to resign or does not resign within ~~five (5)~~ days after the petition is filed, a special election shall be ~~proclaimed~~ called unless the filing is within ~~ninety (90)~~ days of a general election, in which case the question shall be placed on ~~the general election ballot~~ a separate ballot at the same time as the general election. The ~~proclamation~~ call of a special election shall be made by the governor in the case of a state or state district officer ~~and~~ or by the board or ~~official~~ officer empowered by law to ~~proclaim~~ call special elections for ~~the~~ a political subdivision in the case of any officer of a political subdivision of the state."

Section 11. Section 15 of the Montana Recall and Advisory Recall Act, Initiative No. 73, is amended to read as follows:

"Section 15. Notice of a recall election. ~~Shall Be In The Following Form:~~ The notice of a recall election shall be in substantially the following form:

NOTICE OF RECALL ELECTION

Notice is hereby given pursuant to law that a recall election will be held on ~~the ..... day of ..... 197...~~ ..... (Date) for the purpose of voting upon the recall of ..... who holds the office of .....

DATED at ....., ~~the ..... day of ..... 197...~~ ..... (Date)"

Section 12. Section 16 of the Montana Recall and Advisory Recall Act, Initiative No. 73, is amended to read as follows:

"Section 16. Form of ballot. (1) The ballot at such recall election ~~shall be entitled "Recall Ballot", and~~ shall set forth the statement contained in the recall petition stating the reasons for demanding the recall of such officer and the officer's statement of reasons why he should not be recalled. ~~Following the statements shall be printed the following instructions to the voter: "To vote on the recall, mark a cross (X) in the square at the right of yes or no" and immediately thereunder the question "Shall ..... (naming the officer) be recalled", and immediately to the right of such question shall be printed the words "yes" and "no" not less than three sixteenths~~

~~(3/16) of an inch in height, and at the right of each word a square shall be printed on the ballot in which the voter may indicate such voter's preference.~~ Then the question of whether the officer should be recalled shall be placed on the ballot in a form similar to the following:

☐ FOR recalling ..... who holds the office of .....

☐ AGAINST recalling ..... who holds the office of .....

(2) The form of the ballot shall be approved as provided in the election laws of this state."

Section 13. Section 17 of the Montana Recall and Advisory Recall Act, Initiative No. 73, is amended to read as follows:

"Section 17. Officer to remain in office until results declared -- filling of vacancy. The officer named in the recall petition ~~for recall shall continue~~ continues in office until he resigns or the results of the ~~special~~ recall election are officially declared. If a majority of those voting on the question vote to remove the officer, ~~then~~ the office ~~shall become~~ becomes vacant and the vacancy shall be filled as provided by law, provided that the officer recalled ~~shall~~ may in no event be appointed to fill the vacancy."

Section 14. Section 19 of the Montana Recall and

Advisory Recall Act, Initiative No. 73, is amended to read as follows:

"Section 19. Expenses of election. Expenses of a recall election ~~for a state officer~~ shall be paid ~~from the funds of the state, and expenses of a recall election for an officer of a political subdivision of the state shall be paid from the funds of such subdivision~~ in the same manner as the expenses for any other election. ~~The expenditure of~~ such funds constitutes an emergency expenditure of funds, and the political subdivision affected may fund the costs of such an election through emergency funding procedures. In the event a recall election is held for a state or state-district officer, the legislature shall appropriate funds to reimburse the counties involved for costs incurred in running the election."

Section 15. Repealer. Sections 11-721.1, 11-3132, 11-3220, and 11-3540, R.C.M. 1947, and sections 20, 21, 22, 23, and 24 of the Montana Recall and Advisory Recall Act are repealed.

-End-

STATE ADMINISTRATION COMMITTEE

45 Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
791	to make the dept. head of the dept. of fish & game be appointed by the governor as per 82A-106; removing certain qualifications for the director, changing functions of the commission, changing name of the commission	2-16-77	STATE ADMIN. COMMITTEE	2-21-77	As Amended Do Pass	2/22
794	defining the trustee and fiduciary responsibilities of the retirement boards of the hwy. patrol, game wardens, PERS, sheriffs', judges'; revising and clarifying laws pertaining to aforementioned responsibilities	2-16-77	BRAND	2-21-77	Do Pass	2/22
795	amending the montana recall & advisory recall act, initiative No. 73; to clarify scope of application, specify grounds, establish responsibilities on the part of petitioners, refer to bill--it is lengthy	2-16-77	BARDANOUVE, MELOY, SCULLY	2-16-77	Transferred to Judiciary	2/18
798	to create a department of public advocacy & consumer protection & specifying its functions, amending numerous sections	2-17-77	DUSSAULT	2-22-77	Do Not Pass	2/22
801	creating a municipal police officers' retirement system & providing for its administration; amending numerous sections	2-17-77	BARDANOUVE	2-22-77	As Amended Do Pass	2/23
804	to permit legislators to continue to participate in public retirement systems while serving in the Montana legislature, effec. immediately	2-17-77	STATE ADMINISTRATION COMMITTEE	2-22-77	Do Pass	2/22

JUDICIARY COMMITTEE

45th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
SB 396	provide for discretionary rather than mandatory appointment of counsel to determine incapacity etc.	2-18	Turnage	March 11	concurred in	3-17
SB 397	provide for court appointnent of qualified person as personal representative of a decedent's estate, etc.	2-18	Turnage	March 11	concurred in	3-11
HB 795	Montana recall and advisory recall act. specify grounds for recall, etc.	2-19	Bardanouve	Wed 23	do pass	2-24
SB 230	Providing for time of filing or paying upon mailing as relates to reports, claims, tax returns, and statements.	2-19	McCallum	March 7 Monday	not concurred in	3-16
SB 333	Permitting the construction of stock dams of less than 15 acre-feet without securing a water appropriation permit.	2-19	Etchart	March 15 Tuesday	concurred in amended	3/25
SB 398	Making uniform the application of the homestead allowance.	2-19	Turnage	March 7 Monday	concurred in	3-7

JUDICIARY COMMITTEE
February 23, 1977

The regularly scheduled meeting of the House Judiciary Committee was called to order by Chairman Scully at 7:30 a.m. in room 436 of the Capitol Building, Helena, Montana, on Wednesday, February 23. All members were present.

Scheduled for hearing were House Bills #639 and 795.

HOUSE BILL #639:
REPRESENTATIVE BRADLEY, DISTRICT #77:
This bill would provide for personal injury or death judgments to be paid in periodic payments rather than lump-sum payments. The purpose is to pay tomorrows judgments in tomorrows dollars. The good thing that I see is that in making these future payments you could build in the inflation factor. It is my understanding that there is a similar system working in California.

PROPONENT, GERALD NEELY, MONTANA MEDICAL ASSOCIATION:
This bill is not complex but its effect can be complex. It is not really a new concept of periodic payments, but in medical it is new. Social security is an example of perodic payments, Workman's compensation is a periodic payment. One of the prime reasons is that you can tailor the award on a person by person basis. He talked about the formula to set up the periodic payments. He presented a copy of the associations proposed amendments to the committee. Attached.

PROPONENT, G. BRIAN ZINS, MONTANA MEDICAL ASSOCIATION:
He gave the members of the committee a handout stating the impact of payments. Attached.

PROPONENT, J. McMAHON, MD, MONTANA MEDICAL ASSOCIATION:
This bill fits into the pattern of helping the injured patient. The speculation about future damages as we now have in the courts are a concern to judges to protect someone who has suffered loss. The alternative which periodic payments offers should satisfy the courts and restore confidence in the system. If the purpose is to help the injured patient then this bill will aid us in doing that. He gave a copy of the stand taken by the medical association toward periodic payments. (copy attached). This bill has nothing to with Aetna. The Montana Medical Association is actively working toward another approach.

OPPONENT, TOM DOWLING, MONTANA TRIAL LAWYERS:
We are opposed to this bill.

OPPONENT, ARNOLD A. BERGER, YELLOWSTONE BAR ASSOCIATION:
This bill will be totally unworkable. He gave examples of what might happen in various types of cases. We need a reasonable alternative, but this bill is not it. The thing to do with an award is to get rid of it. A patient should not have to live on a dole from some insurance company. Almost 100% of medical malpractice cases are done on a

contingent fee basis. He talked about how a lawyer might not get paid. He gave examples of how this might happen and in what instances.

OPPONENT, GREG MORGAN, STATE BAR OF MONTANA:
The purpose of the bill seems to me to be confusing. The bill does not allow for a windfall payment. On one page it states the judgment can be altered and then on the next page that it cannot be altered. It needs clarification.

REPRESENTATIVE BRADLEY:
I think some of the objections listed are legitimate. I think what is happening right now is the immediate problem for the consumer or the people concerned.

REPRESENTATIVE KEYSER:
How many cases do you have knowledge dealing with malpractice have been settled by more than $120,000?

MR. BERGER:
In my own law firm the answer is none. We do comparatively little of medical malpractice. In 27 years we have had only 5 malpractice cases.

MR. NEELY:
When you weigh any type of legislation you weigh the detriments against the benefits.

REPRESENTATIVE COURTNEY:
What happens if the insurance company goes bankrupt?

MR. NEELY:
The bill provides for that with bond or whatever.

REPRESENTATIVE HAND:
How would this reduce insurance premiums?

MR. NEELY:
This has a calculable effect. The difference between the cost of the annuity and the jury award. You can calculate the dollar values involved in that. It very definitely could result in a reduction in premiums.

There being no further questions the hearing closed on House Bill #639:

The hearing opened on House Bill #795: REPRESENTATIVE BARDANOUVE:
This bill is one of the more important pieces of legislation that may come before this committee. I firmly believe in a recall system but I have the feeling that this particular bill was one of the most dangerous pieces of legislation I have seen. Look on page 3, line 19, it will make jokes of many public officials or elected officers. He gave a copy of a handout to the members of the committee. This bill

will clarify a legal nightmare. I had the legislative council do some research and I had Bob Person draft a bill. I then had the secretary of states office look it over to see if it was workable. I then ran it by the governors office and Mr. Ellison checked it out. Then I took it to the attorney generals office and got their comments and review. There are some substantive changes. It removes the advisory recall proceedure for U.S. district judges. We had to clarify what an official was. We tried to define who would sign the petition for recall. It wasn't clear. We have now clearly defined who can sign the recall petition. There was some question of who would pay for the election. There were several problems we addressed ourselves to in addition to these.

PROPONENT, MARGARET DAVIS, LEAGUE OF WOMEN VOTERS:
We found the recall would be a valuable tool, we felt the concept was good but the bill did need to be clarified. We praise the lines in 795 that define what an official is. We also approve of the section for need of a notary. We support the bill.

PROPONENT, MIKE PICHETTE, MONTANA DEMOCRATIC PARTY:
I would like to say that the Democratic party has been in favor of the idea of recall, but the recall bill as it was written, we had to take the position of being against. However, this bill makes it fair and workable. It makes it clear that you can only use it in a proper manner. We feel it was also unconstitutional before.

THERE WERE NO OPPONENTS:

REPRESENTATIVE BARDANOUVE:
We have used as a basis for recall some of the basic Montana law. I think we now have a workable and fair bill.

The hearing closed on House Bill #795:

The meeting adjourned for a short recess before reconvening for the sub-committee on water, at 9:30 a.m.

REPRESENTATIVE JOHN SCULLY, CHAIRMAN

Mary Ellen Connelly

Mary Ellen Connelly, Secretary

JUDICIARY COMMITTEE

EXECUTIVE SESSION
February 24, 1977

The House Judiciary Committee was called to order by Chairman Scully at 7:00 a.m. on Thursday February 24, 1977 in room 436 of the Capitol Building, Helena, Montana. All members were present with the exception of Representatives Kennerly and Teague.

REPRESENTATIVE SEIFERT moved the committee adopt the sub-committee report on water given by Representative Day. The motion carried with Representative Lory voting "no".

HOUSE BILL #486:
REPRESENTATIVE HAND moved "do not pass".
The motion carried with Representatives Holmes, Scully, Eudauly and Courtney voting "no".

HOUSE BILL #574:
REPRESENTATIVE DUSSAULT moved to amend lines 34 on page 2 and lines 9 and 10 on page 2.
REPRESENTATIVE LORY moved a substitute motion "do not pass". The motion carried with Representatives Ramirez, Eudaily, McLane and Scully voting "no".

HOUSE BILL #639:
REPRESENTATIVE DUSSAULT moved "do not pass".
The motion carried with the vote unanimous.

HOUSE BILL #782:
REPRESENTATIVE RAMIREZ moved the proposed amendments. The motion carried with the vote unanimous.
REPRESENTATIVE RAMIREZ moved "do pass as amended".
The motion carried with the following representatives voting "no". Representatives Seifert, Scully, Courtney, Baeth, Hand, and Eudaily.

HOUSE BILL #795:
REPRESENTATIVE BAETH moved "do pass".
The motion carried with the vote unanimous.

HOUSE BILL #800:
REPRESENTATIVE RAMIREZ moved to accept the proposed amendments. The motion carried. REPRESENTATIVE HOLMES moved to strike the repealer section. The motion to strike carried.
REPRESENTATIVE KEYSER moved "do not pass as amended"
REPRESENTATIVE HOLMES moved a substitute motion "do pass as amended".
REPRESENTATIVE RAMIREZ moved to amend page 6, line 20. The motion to amend carried with Representative Eudaily voting "no".
The question was called and the motion "do pass as amended" carried with the following representatives voting "no". Representatives Courtney, Keyser, Seifert, Eudaily, Scully and Conroy.

HOUSE BILL #761:
REPRESENTATIVE RAMIREZ moved to reconsider action taken on a previous meeting. The motion to reconsider passed with the vote 7 to 5. REPRESENTATIVE RAMIREZ moved an additional amendment. The motion carried with Representatives Baeth, Seifert, Scully and Hand voting "no". REPRESENTATIVE RAMIREZ moved "do pass as amended". The motion carried with Representatives Baeth, Seifert, Scully and Hand voting "no".

HOUSE BILL #738:
REPRESENTATIVE DUSSAULT stated the amendments for this bill were not ready and she would present them on the floor. The motion "do pass" was again presented although action had been taken already. The motion carried with the vote unanimous.

HOUSE BILL #739:
REPRESENTATIVE KEYSER reported from the sub-committee and suggested an interim study be conducted. He moved "do not pass" and the motion carried with the following representatives voting "no". Representatives Baeth, Dussault, Holmes and Day.

HOUSE BILL #462:
REPRESENTATIVE RAMIREZ reported from the sub-committee. He moved the proposed amendments. Representative Holmes moved an additional amendment. The motion to amend carried with the vote unanimous.
REPRESENTATIVE DUSSAULT moved "do pass as amended". The motion carried with Representatives Conroy, McLane, Seifert and Scully voting "no".

HOUSE BILL #814:
REPRESENTATIVE DAY moved to table this bill which had been held in committee pending the outcome of a similar bill in the Senate. The motion carried with the vote unanimous.

HOUSE BILL #685:
REPRESENTATIVE RAMIREZ moved to take from the table. The motion carried with the vote unanimous. REPRESENTATIVE RAMIREZ moved some amendments. The motion carried.
REPRESENTATIVE LORY moved "do pass as amended". The motion carried with the vote unanimous.

The meeting adjourned at 9:55 a.m.

JOHN P. SCULLY, CHAIRMAN

Mary Ellen Connelly

Mary Ellen Connelly, Secretary

45th LEGISLATIVE SESSION

COMMITTEE ON State Administration

HOUSE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
396	2-25-77	rereferred to Judiciary 3-4-77							
223	4-9-77	not accepted by the Senate for action - put in our committee until end of session							
808	4-7-77	4-11-77	4-12-77				4-11-77		
565	2-25-77	3-19-77	3-19-77					3-19-77	
352	2-25-77	rerererred to Judiciary 3-4-77							
447	2-25-77	3-28-77	4-2-77				4-2-77		
719	2-25-77	3-21-77	3-31-77					3-25-77	
741	2-25-77	3-21-77	3-28-77				3-25-77		
765	2-25-77	3-21-77	3-28-77				3-25-77		
745	3-2-77	3-21-77	3-31-77					3-25-77	
804	3-2-77	3-21-77	3-21-77				3-21-77		
213	3-2-77	3-23-77	4-13-77						4-13-77
297	3-2-77	3-23-77	4-1-77				4-1-77		
788	3-2-77	3-23-77	4-4-77					4-2-77 Without Recommend.	
794	3-2-77	3-25-77	3-28-77				3-25-77		
791	3-5-77	3-26-77	3-30-77				3-30-77	and transfer to Fish & Game	
795	3-5-77	3-26-77	4-1-77					3-30-77	

Senate Bills and Resolutions

MINUTES OF THE MEETING
SENATE STATE ADMINISTRATION COMMITTEE
MARCH 26, 1977

The meeting was called to order by Senator Towe, Chairman, at 8:00 a.m. in the Governor's Reception Room of the Capitol Building. Committee members present were Senators Towe, Story, Devine, Blaylock, Jergeson, Roskie and Rasmussen. Senator Brown was excused.

The following bills were discussed: HB 791

HB 795

HB 791 Representative George Johnston, District 13, stated he had introduced the bill at the request of the House State Administration Committee. He stated he had introduced HB 133 but its provisions were not broad enough so this bill was drawn up to include the department carrying out the functions of the department; the Director is in charge of personnel hiring and firing; the Commission retains their functions, and personnel has the right to appeal to the Labor Appeal Board rather than the Commission.

Proponents

Bob Lohn, staff attorney representing the Governor, stated the bill brings the Commission up to date and draws the line between functions of the department, the director, the Commission and the

There were no further proponents or opponents and Representative Johnston closed by stating he had met with the five commissioners and they had approved the bill. He felt under the present law the Director is no more than a secretary to the commissioners.

Questions by Committee

Senator Blaylock asked what the bill really does. Mr. Lohn answered it give clear administrative control within the department to the director and defines the responsibilities of the commission--that being a shift of power of sorts but only in defining function.

There being no further questions, the hearing was closed.

HB 795 Representative Bardanouve, sponsor of the bill, stated the bill is the result of concern over the recall initiative that passed in the general election. It was passed by over 40,000 votes which certainly makes it a mandate of the people and the people who worked on it should be commended, however its definitions are ambiguous and it does not clarify or conform to present law.

He further stated the law does provide for amending an initiative measure. It has been thoroughly researched

by three legislative council researchers, reviewed by the Secretary of State for conformity to election laws; Larry Elison in the Governor's Office reviewed the bill, and then it was checked out by the Attorney General.

The bill defines the official list of voters as a list of registered voters. Representative Bardanouve stated a federal judge cannot be recalled according to federal law and only members of the body can pass on the qualifications of a member of Congress. The bill also clarifies who may sign a recall petition. Only people eligible to vote for the person being recalled can sign the petition. The expense of a recall election will be born by the state rather than the county where the petition originates.

Representative Bardanouve presented a copy of research material from legislative council to the committee (see attached #1).

He further stated of the 31 states having recall, Montana's is the most liberal. The initiative stated anyone for any reason can be recalled and he stated this is the most dangerous part of it. The initiative as originally written would reduce public officials to puppets as they would only do the popular thing at any given time.

Proponents

Jim Murray, Executive Secretary of the Montana State AFL-CIO supported the bill. He noted that under the current initiative minority rule would prevail.

Representative John Scully, District 76, stated, as Chairman of the House Judiciary Committee, HB 795 is the best researched bill of this session. The mechanics are perfect.

Margaret Davis, League of Women Voters, supported the bill (see attached #2).

Opponents

Wyverne Cranmore, Ravalli County Farm Bureau, spoke in opposition to the bill (see attached #3).

Bill Koerner, representing Independent Americans, stated their group worked hard on the initiative and got over 60,000 signatures. He felt the public should have the power to recall any official who is paid by the electorate. He stated they were opposed to all the changes in the bill.

Bud Wallace, representing himself, asked why the originators of the initiative weren't contacted about the bill. He noted that some legislators said they had voted for the bill without being thoroughly familiar with it.

Peggy Christianson, representing herself, quoted the Constitution, Article 3, Section 4, regarding initiatives. She was especially adamant that citizens have the right to recall members of the judiciary.

Mary Ann Carlin, representing Independent Americans, opposed the bill (see attached #4).

Steve Trenka, representing the Citizens' Protective Association, Billings, asked what officials were afraid of--how many people have been hurt by recall? He said no one was out to "get" anyone and they would give credit where credit was due. He stated 80 per cent of public employees are appointed and should be subject to recall.

Jimmy Shea, Public Service Commissioner, stated he neither opposed or supported the bill but wished to make two points regarding it. First, who determines what constitutes a physical or mental lack of fitness, and second, the time limit of three months to initiate a recall process is too short.

Mabel Trenka, secretary of the Citizens' Protective Association, Billings, stated she concurred with previous testimony.

Senator Towe allowed all who supported or opposed the bill to stand and state their names and position on the bill.

John Scully (Representative) presented a copy of the hearing schedule and committee report to the committee regarding previous testimony to the effect that adequate notice was not given in the House on the bill.

Representative Bardanouve closed by saying we must have law based on law, not on an official's interpretation of it. He stated the rule of the minority can become as much of a tyranny as the majority who take away the rights of the minority.

Questions by the Committee

Senator Towe asked if we have the right to limit the initiative if the people voted on it the way they did.

Representative Bardanouve stated they didn't know what they were voting on as the wording is very ambiguous.

Senator Towe asked about the three month time limit on circulating a petition.

Representative Bardanouve stated three months should be adequate as you don't want a threat of this nature

hanging over an official's head for an indefinite period of time.

Senator Rasmussen asked Mr. Koerner if the initiative had originally been written as the bill is now, would it have passed as overwhelmingly.

Mr. Koerner stated no it wouldn't have as it isn't what the people want.

Senator Towe asked if the rumor was true that recall petitions were being initiated against the sponsor and signers of the bill.

Mr. Koerner stated this would be sufficient grounds for recall as it goes against the will of the voters.

There being no further questions, the hearing was closed. There being no further business, the meeting adjourned to reconvene Monday, March 28, 1977, at 11:00 a.m.

Thomas E. Towe, Chairman

ROLL CALL

State Administration COMMITTEE

45th LEGISLATIVE SESSION - - 1977 Date 3/20/77

NAME	PRESENT	ABSENT	EXCUSED
Senator Thomas E. Towe, Chrm.	X		
Senator Pete Story, V. Chrm.	X		
Senator Bob Brown			X
Senator A.T. "Tom" Rasmussen	X		
Senator George F. Roskie	X		
Senator John W. Devine	X		
Senator Greg Jergeson	X		
Senator Chet Blaylock	X		

Each day attach to minutes.

DATE 3/26/91

COMMITTEE ON Local Government

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
Bill Carter	self	795		✓
Mimi Snyder	self	795		✓
Debbie Johnson	self	795		✓
Ted Bear	"	795		✓
Ron Porter	self	795		✓
Bill Ashen	Agri. Prsv. Assn.	791	✓	
[illegible]	self	795		✓
Margaret S. Davis	League of Women Voters	795	✓	
Nadia Common	Mont. Conservation Council	795	✓	
[illegible]		795		✓
[illegible]	[illegible]	[illegible]		✓
Evelyn Schmidt	self	795		✓
[illegible]		[illegible]		✓
[illegible]	self	795		✓
[illegible]	[illegible]	[illegible]		✓

(Please leave prepared statement with Secretary)

MATERIAL TO ACCOMPANY HB 795

		Page
A.	Analysis of Amendments to the Recall Initiative in the Bill	A-1
B.	Analysis of the Montana Recall and Advisory Recall Act	
	Introduction	B-1
	Summary of Conclusions and Recommendations	B-2
	Part I: Analysis	B-3
	Part II: Administrative and Cost Implications	B-6
	Part III: Distinction Between an Officer and an Employee	B-10
	Part IV: Removal of Public Officers in Montana, Past and Present	B-13
	Part V: Potential for Abuse	B-17
	Part VI: Recall of a Senator or Representative in Congress	B-18
	Part VII: Advisory Recall	B-19
C.	Text of the Montana Recall and Advisory Recall Act.	C-1
D.	Survey of Recall Literature	D-1
E.	Adoption of Recall Laws	E-1
F.	Use of Recall	F-1
G.	Recall Provisions in Other States	G-1

MONTANA STATE AFL-CIO
APRIL 29 1956

Box 1176, Helena, Montana
ZIP CODE 59601

JAMES W. MURRY
EXECUTIVE SECRETARY

LUNDY SHOPPING CENTER
MISSOULA HIGHWAY

REMARKS OF JAMES W. MURRY ON HOUSE BILL 795, HEARINGS OF THE SENATE STATE ADMINISTRATION COMMITTEE, MARCH 26, 1977

I am appearing on behalf of the membership of the Montana State AFL-CIO who, during our annual convention last summer, adopted a firm policy statement of opposition to Initiative 73, the Montana Recall and Advisory Recall statement of opposition to Initiative 73, the Montana Recall and Advisory Recall Act.

Quoting from that policy statement, I would like to make it clear that the Montana State AFL-CIO is opposed not to the concept of recall, but to the conditions for recall as set forth in Initiative 73. Our position states that "the petitions for recall elections should be for illegal activities or gross misconduct by an elected or appointed official, not at the whim or fancy of a small group of individuals."

It has been publicly established that the people behind the recall initiative are members of some ultra-conservative political groups operating in this state. Initiative 73, without the safeguards proposed in House Bill 795, would provide minority groups with a free license to remove from office any state official who disagrees with their political philosophy.

Under the wording in the initiative, all they would have to come up with is 10 per cent of the electors voting in the preceding general election in order to put the recall machinery into motion. But is is the grounds for recall specified in the initiative that worries us. According to the initiative, "any reason causing the electorate dissatisfaction with a public official shall be sufficient grounds for recall, notwithstanding a good-faith attempt to perform the duties of his office."

We're not saying that the recall initiative is dangerous and irresponsible just because it happens to be supported by a group of people with a political philosophy that differs from the Montana State AFL-CIO. We would be equally concerned about this issue if Initiative 73 had the backing of the Farmers' Union or the ACLU because the threat of government by minority would be just as real. Any time you talk about removing public officials for any reason that causes dissatisfaction among 10 per cent of the voters, you're talking about minority rule, and we don't care what political philosophy is represented by that 10 per cent.

True representative government is based on majority rule and you, as lawmakers, would be acting irresponsibly to allow a small group of voters, no matter what their philosophy, to tyrannize this state by removing officials without good cause. House Bill 795 eliminates that hazard, and for that reason, we urge your support of this legislation.

PRINTED ON UNION MADE PAPER

POLICY STATEMENT #2

As in years before, the John Birchers, Right-to-Workers, and other groups of ultra-conservative leanings have come forth with another form of minority rule. Initiative number 73, The Montana Recall and Advisory Recall Act, provides for the recall of any person holding office, either elective or appointive, for any reason, regardless of a good faith attempt to perform his duties. Ten per cent (10%) of the voters in the previous general election, could demand the recall of a state official. For county and city or town, fifteen per cent (15%) and twenty per cent (20%) respectively are required for recall of elected or appointed officials.

The right-wing elements in Montana could possibly remove any official who disagreed with their political philosophy, for the minority 10% could challenge any opponent two months after election. Under the provisions of this initiative any person or group of persons need no legitimate reason other than dislike or disapproval to petition for a recall election.

The Montana State AFL-CIO does not oppose the concept of recall, only the conditions for recall. Petitions for recall elections should be for illegal activities or gross misconduct by an elected or appointed official, not at the whim or fancy of a small group of individuals.

The Montana State AFL-CIO vehemently opposes any attempt by the ultra-right to force minority rule on the democratic majority. Our form of government was founded on the principle of "by the people and for the people", not by a person and for all the people.

Submitted by the Executive Board of the Montana State AFL-CIO
Convention voted concurrence.

#2

NAME: Margaret S. Davis DATE: 26 Mar 77

ADDRESS: 917 Harrison Helena MT

PHONE: 443-3487

REPRESENTING WHOM? League of Women Voters of Montana

APPEARING ON WHICH PROPOSAL: HB 795

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: The League of Women Voters is concerned over the lack of clarity in Initiative 73 as passed in Nov 76. The definitions alone contained in HB 795 are important and merit passage.

HB 795 also brings the Recall Act into better technical shape - clarifying the petition procedure and making those sponsoring the recall drive publicly known & responsible for their actions.

The League feels repealing the advisory recall portions of HB 795 is desirable. Such elections would be enormously expensive and their results would not be binding.

Finally recall is a legitimate means for citizens to express their displeasure with an official. But depending on the formula used and the grounds for recall required such acts can have the potential for harassing dedicated elected & appointed officials who are acting well within the legal scope & duties of their offices. The League particularly supports the part of Section 3 (sub. 6 3, ~~time 25~~ p 3, line 25) which says that no one can be recalled for obeying the law.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

#3

NAME: Kyriacos Cavanaugh DATE: 3/26/97

ADDRESS: 135 North Main St. Carrabassett, ME.

PHONE: 961-3512

REPRESENTING WHOM? Pittsfield Co. Farmers Bureau, ME. Citizens

APPEARING ON WHICH PROPOSAL: HB 795

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? ✓

COMMENTS: Since this bill negates an initiative passed by a majority of the people why should we even have a law if it is a direct slap to the intelligence of the public.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Peggy Chaloen DATE: _____

ADDRESS: Deer Lodge

PHONE: _____

REPRESENTING WHOM? Self

APPEARING ON WHICH PROPOSAL: HB 795

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? ✓

COMMENTS: ~~I~~ The People voted on the recall law and the Rep have no legal right to do anything with

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: MaryAnn Carling DATE: 3-24-73

ADDRESS: Rt 1 Box 88F Butte, Mt.

PHONE: 494-3425

REPRESENTING WHOM? An Independent Montana American

APPEARING ON WHICH PROPOSAL: 795

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? ✓

COMMENTS: Judge say "give the power to the people" — the appointed or elected officials are likened to The tail that wagged the dog (US) - We the people — have the right to hire (elator appoint) or fire for cause — Right of appeal is given to these persons, as citizens of US, i.e. 14th Amendment . . . nor shall any State deprive any person of life, liberty, or property, without due process of law nor deny to any person within its jurisdiction the equal protection of the laws.

Check & Balance — as citizens of the Republic our right

"Election or appoint does not give Divine Right."

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

"D. of Indep. . . . That to secure these rights, Governments are instituted among Men, deriving their just powers from the Consent of the governed.

Every time the rights guaranteed under the Constitution of the U.S. are abridged — less rights of my children & grandchildren & yours too. Judas people — sell our soul & rights for 30 pieces of silver (now inflated.)

"Election costs $

but our rights & freedoms are more precious."

we elect them & they
"don't trust our judgment"

We are not as petty as is portrayed.

Minority rule — What do we have today? ~~no matter what Harry Bullock~~

~~or political belief~~

How much time spent - investigation of each bill passed. How much is rubber stamped to save time. As it will pass anyway

Montanans can think for themselves

WEEKLY SCHEDULE OF HEARINGS

For the week of Feb. 21 22 23 24 25 26

	MON.	TUES.	WED.	THURS.	FRI.	SAT.
434 AGRICULTURE LIVESTOCK & IRRIGATION 10:05 T/Th		SB89				
225 Tres. Office APPROPRIATIONS 8:00						
434 BUSINESS & INDUSTRY 10:05 M/W/F 7:30 p. M/W/F	HB 380 - 530-487 536-597 10:05 A.M. HB790-786 @6:30 P.M.		HB 784 688- 10:05AM			
431 EDUCATION 10:05 M/W/F 7:30 p. M/W/F	HJR72 @10:00 AM		HB 624 467-816 HJR 84 @10:05A.			
434 FISH & GAME 12:05 T/Th		SB 281 HJR82				
436 HIGHWAYS & TRANSPORT' 10:05						

NAME: Steve TRENKLE DATE: 9/26/11

ADDRESS: 1530 BITTERROOT DR

PHONE: 259-4625

REPRESENTING WHOM? myself - 8 Groups & Assoc. Citizens protective

APPEARING ON WHICH PROPOSAL: Recall Bill 795

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: many comments for the support of recall and to correct inherent rights of the people as voted on by initiative and not as Amended in the final Bill

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Mabel Tooker DATE: 3/24/27

ADDRESS: 1530 S. Wyoming + Apt. C Billings Mt.

PHONE: 2 [illegible]

REPRESENTING WHOM? Citizen Voice Service.

APPEARING ON WHICH PROPOSAL: H.B. 795

DO YOU: SUPPORT? original AMEND? _____ OPPOSE? as amended

COMMENTS: We oppose the "authority" of the legislature to the amended bill as it now reads for the purpose of creating a Highway Patrol. We also oppose the purpose of fostering to strengthen and expand the powers and functions of the Highway Patrol.

People in this state have labor and contract rights and civil rights which should not be [illegible].

(PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY)

STANDING COMMITTEE REPORT

February 24, 19 77

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 795

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE MONTANA RECALL AND ADVISORY RECALL ACT, INITIATIVE NO. 73, TO CLARIFY THE SCOPE OF ITS APPLICATION, TO SPECIFY GROUNDS FOR RECALL, TO ESTABLISH MORE DEFINED RESPONSIBILITIES ON THE PART OF PETITIONERS, TO CORRECT AND CLARIFY CERTAIN ADMINISTRATIVE PROVISIONS OF THE ACT. TO REMOVE ADVISORY RECALL PROCEDURES FOR U. S. DISTRICT JUDGES, TO REMOVE THE APPLICATION OF THE ACT TO REPRESENTATIVES IN CONGRESS, TO CORRECT CERTAIN ERRORS IN FORM, AND TO REPEAL CONFLICTING STATUTES; AMENDING SECTIONS 1, 2, 4, 7, 8, 10, 11, 13, 15, 16, 17, AND 19 OF THE MONTANA RECALL AND ADVISORY RECALL ACT; AND REPEALING SECTIONS 11-721.1, 11-3132, 11-3220, AND 11-3320, AND 11-3540, R.C.M. 1947, AND SECTIONS 20, 21, 23, AND 24 of THE MONTANA RECALL AND ADVISORY RECALL ACT."

Respectfully report as follows: That HOUSE Bill No. 795

DO PASS

Rep. John Scully Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE HEARINGS

JUDICIARY
Name of Committee

February 18, 1977
Date

The following bills will be heard in committee in 436, Room No.

_____, on Weds. 23rd, 1977, at
Place or location Date

7:30 a.m. ☒ P.M.
Time

HB 639, 795

M. E. Connelly, Sec.
Committee Chairman for
Judiciary
Committee

Martha B. McGee, Chief Clerk
House of Representatives

HINGHAM GROCERY

Phone 397-2155

"Quality Meat & Groceries"

P.O. Box ~~547~~ 185
Hingham, Montana 59528

State Administration Comm.
Helena Mont

Dear Sir:

I would like to see HB791 either killed or Amended so the Commission has power of approval over dept heads and regional Coordinator.

Sincerely
Ray Nitz

NAME: Robert Charlemagne DATE: 3-26-77

ADDRESS: Box 802 Deer Lodge Mont.

PHONE: 846 3945

REPRESENTING WHOM? Montana Nat

APPEARING ON WHICH PROPOSAL: HB 195

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? ✓

COMMENTS: Violate civil rights of the people

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Nellie Cornelius DATE: 3-26-7)

ADDRESS: 130 Chester Ave, Billings

PHONE: 252-8824

REPRESENTING WHOM? Retail Lic 795

APPEARING ON WHICH PROPOSAL: _____

DO YOU: SUPPORT? ~~X~~ AMEND? _____ OPPOSE? X

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: GENE SPILDE DATE: 3-26-77

ADDRESS: BIG TIMBER MONT.

PHONE: 932-3171

REPRESENTING WHOM? S.I.G.P.A.

APPEARING ON WHICH PROPOSAL: 791

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Bud Wallace DATE: _____

ADDRESS: 710 So. Front St Hamilton

PHONE: 363 2433

REPRESENTING WHOM? Self

APPEARING ON WHICH PROPOSAL: _____

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? ✓

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Don Van Dyken DATE: 3-26-77

ADDRESS: Rt 4 Box 81 Bozeman

PHONE: 587-3842

REPRESENTING WHOM? 795

APPEARING ON WHICH PROPOSAL: _____

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: KENNETH L. KERSHNER DATE: 3/26/77

ADDRESS: Rt. 1, Box 63, VICTOR, MT 59875

PHONE: 961-3717

REPRESENTING WHOM? SELF

APPEARING ON WHICH PROPOSAL: H.B. 795 (SB 403)

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X

COMMENTS: The Recall and Advisory Act started as an initiative by citizens of Montana. It was passed by the voters of Montana and is an expression of the desires of Montana people. The introduction of HB 795, which essentially negates the act, is an arrogant breach of faith with the citizens of Montana. H.B. 795 is contrary to the wishes of the Montana citizens and should therefore be killed.

Any needed improvements to the act should be referred back to the citizens for approval.

Kenneth L. Kershner

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Mr. Charmen and Members of the Committee (HB 795 Gov Cont. Room)

We the people are responsible for what occurs in our state + nation. We are the masters and those who serve must be ~~answerable~~ accountable for their actions, the recall law is desirable as it ~~was~~ exists because it allows people to legally challange their public servants. the Challanged may be retained or removed from their position by the ultimate court in the land, the people and their ballot. Any person seeking to exempt himself from this procedure of redress is saying to me that the majority of the voters who voted for the current recall law are untrustworthy uninformed, and illiterate beings ~~only~~ worthy only of laboring and paying 40% of their income to support government.

The recall process is a resonable method involving several steps and can hardly be considered arbitrary as some official seem to fear. first circulation of petition, then validation, next placement on the ballot, public media input, finally the vote. What better method, may I ask, can be devised than for everyone from the Governor on down being held ~~answerable~~ accountable to the people

NORMAN HOCKMAN
Belgrade 388-4618

NAME: BOB PUTNAM DATE: March 26

ADDRESS: Box 2126 Rt 2 Hamilton Mont

PHONE: 961-4360

REPRESENTING WHOM? INDEPENDANT AMERICANS

APPEARING ON WHICH PROPOSAL: AMENDMENTS TO RECALL LAW

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X

COMMENTS: A MAJORITY OF MONTANA CITIZENS VOTED TO BRING INTO EXISTANCE A RECALL LAW THAT WOULD GIVE US THE POWER TO RECALL CORRUPT OR INCOMPETENT PUBLIC SERVANTS. I OBJECT STRONGLY TO ANY ALTERATION IN THE LAW AS IT NOW STANDS AND PARTICULARY ANY AMENDMENTS THAT WOULD ALTER THE % REQUIREMENTS OR THE ABILITY OF THE CITIZENS OF THIS STATE TO HAVE AN ACCOUNTING FROM ALL OF OUR PUBLIC OFFICIALS

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Members Of The Committee

I think it is fortunate that we have two Houses in the next legislature. This bill slipped thru the House without a dissenting vote. It should not have had this easy passage. At the minimum it should have had my "no" vote

I urge this committee to take a hard look at those amendments to the Recall Referendum. I think much was deleted that should be restored

Thank you for your Consideration

Rep Elmer J Severson
Dist 9A Ravalli Co.

Referring to
HB 795

NAME: Irene Snyder (Nini) DATE: March 26, 1977

ADDRESS: 1610 Cannon #3 Helena

PHONE: 442-8668

REPRESENTING WHOM? myself

APPEARING ON WHICH PROPOSAL: 795

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? ✓

COMMENTS: I am an individual and I want to protect our state of Montana and maintain honesty and morals in our county.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: NORMAN HOEKMAN DATE: MAR 26

ADDRESS: Belgrado

PHONE: 388 4617

REPRESENTING WHOM? Self

APPEARING ON WHICH PROPOSAL: HB 795

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? ✓

COMMENTS:

I would like permission to speak

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Box 114
Sula, Mont.
Mar. 28, 1977

Senator Tom Tone
Capitol Station
Helena, Mont. 59601

RE: H B 795

Dear Senator Tone:

Thank you for your March 22 reply; my testimony was not given at the hearing; so I have enclosed the pink sheets, as the secretary was gone when I finished mine.

The biggest rub to me and to most I know is that Mr. Bardanouve openly professes to have chopped and changed the Recall Law with his H B795 axe strictly for our benefit; and yet has obviously condoned the big package of benefits through the House with as much secrecy as possible.

This does not compute, ignorance of the people notwithstanding.

Which brings up the biggest rub; Mr. Bardanouve's position that the great proletariat cannot determine what is best for them.

It is the biggest rub because it has been stated by other legislators also, as well as implied by many more, including the 94 other representatives who voted for HB795, and by one of your committeemen.

I have compared HB795 with Initiative #73 and I am confident that my understanding of basic sematics is sufficient to determine that HB795 is no benevolent package of benefits, but simply rather a brazen attemt to jerk the teeth out of our Recall Law.

I intend to follow 795 closely and to do whatever necessary and possible to protect our right to recall. It is past time to establish just how ignorant the peasants really are.

Thank you for your time and consideration.

Sincerely,

Les Bean

cc. Senator Russ Bergren

April 5, 1977

Les Bean
Box 114
Sula, Mt. 59871

Dear Les:

I received your letter and testimony on House Bill 795 and will see that your comments are entered into the record.

I appreciated the participation of the many people who opposed the bill. Your arguments are sound and I agree.

Sincerely,

Thomas E. Towe
Senator, District 34

TET/mas

NAME: Les Bean DATE: Mar 26, 1977

ADDRESS: Box 114, Sula MT 59871

PHONE: 821-3848

REPRESENTING WHOM? Self, Friend & Neighbors

APPEARING ON WHICH PROPOSAL: HB 795

DO YOU: SUPPORT?_____ AMEND?_____ OPPOSE? X

COMMENTS: I had hoped to testify as I think I represent a portion of the voters who probably are not usually represented at these hearings; that is, those who [redacted] pay little attention to what carries on in Helena. Many people who ordinarily "couldn't care less about politics" are upset about HB 795. The main objection to the law as it exists appears to be fear of "minority control." I see [redacted] no way that the 70% mandate in Nov., [redacted]. The 90%+ survey response in favor of recall, and the 50%+1 majority vote needed to remove an official from office could be considered [redacted] representative of "minority interests."

The 2nd objection appears to be fear of an official being removed for performing a mandatory duty of office. The moral aspect of performance of duties

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

not withstanding (which I completely agree with); I sincerely doubt that a majority of voters would remove an official from office for any act, however unpopular, if they were aware that the performance of the act [redacted] was indeed mandatory. After all, what would be gained, since his [redacted] replacement would (cont)

OBVIOUSLY BE SUBJECT TO THE SAME MANDATORY "REGULATION?

IN SUMMARY, THEN I FAIL TO SEE JUSTIFIABLE REASONS FOR THE MAIN OBJECTIONS AS OFFERED. THE ONLY REASONS FOR SUCH DEGREE OF CONCERN CAN ONLY BE OF A NATURE WHICH THESE PEOPLE CARE NOT TO MAKE KNOWN; IS THE ESSENCE OF MY AND MANY OTHERS EVALUATION. (THE FACT THAT MR. DRISCOLL & MR SEVERSON SAID NOTHING TO NO ONE WHILE HOME AFTER VOTING ON THIS BILL TELLS US AS MUCH AS ANYTHING ~~ELSE~~, NOT TO MENTION THE FACT THAT THE ALLEGED "IMPROVMENTS AND AMENDMENTS" WERE NOT BROUGHT TO THE ATTENTION OF THE PEOPLE IN GENERAL AND THE GROUP WHO SPONSERED THE RECALL LAW IN PARTICULAR (BEFORE FORMING HB795)

ALSO, REGARDING THE ALLEGED "LEGAL UN-WORKABILITY" OF THE LAW, IS IT NOT THE RESPONSIBILITY OF THE JUDICIAL BRANCH OF THE GOVERNMENT TO MAKE SUCH A DETERMINATION, NOT THE LEGISLATIVE? AND EVEN IF SO, HOW IS HB795 ANY MORE "WORKABLE" LEGALLY?

LASTLY, THE "UNWARRANTED COSTS" ARGUMENT IS QUITE INCIDENTAL, BECAUSE I AM SURE THAT THE ~~ELECTORATE~~ OF ELECTORATE WOULD HAVE ALREADY DETERMINED IT TO BE MORE ECONOMICAL TO REMOVE THE OFFICIAL THAN TO LEAVE HIM IN, OR THEY WOULD NOT ATTEMPT TO RECALL IN THE FIRST PLACE.

NAME: Ron Porter DATE: Mar 26, 1977

ADDRESS: RR#1 Box 1235 Hamilton, Mont. 59840

PHONE: 363-3432

REPRESENTING WHOM? Self + Concerned Residents of Ravalli County

APPEARING ON WHICH PROPOSAL: HB 795

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X

COMMENTS: I think this is a flagrant violation of the People's Rights after overwhelming voting in favor of the original Recall Measure in the last General Election.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

MINUTES OF THE MEETING
SENATE STATE ADMINISTRATION COMMITTEE
MARCH 30, 1977

The meeting was called to order by Senator Towe, Chairman, at 4:40 p.m. in Room 410 of the Capitol Building. Committee members present were Senators Towe, Rasmussen, Story, Jergeson, Blaylock, and Devine. Senators Roskie and Brown were absent.

The following bills were discussed: HB 302
HB 795

HOUSE BILL 302

The action on the bill was continued from March 30 morning committee meeting minutes.

Senator Jergeson moved amendment # 2 and amendment #8 on the attached committee report. THE MOTION CARRIED UNANIMOUSLY.

Senator Rasmussen moved amendment #5 on the attached committee report. THE MOTION CARRIED UNANIMOUSLY.

Senator Story moved amendments #3, 4, and 6 on the attached committee report. THE MOTION CARRIED UNANIMOUSLY.

Senator Jergeson moved House Bill 302 Be Concurred In As Amended. THE MOTION CARRIED WITH SENATORS DEVINE AND STORY VOTING NO.

HOUSE BILL 795

Senator Rasmussen moved to amend the bill as per the amendments on the attached committee report. THE MOTION CARRIED UNANIMOUSLY WITH SENATORS BROWN AND STORY VOTING NO ON AMENDMENTS # 2, 3, and 4.

Senator Rasmussen moved House Bill 795 Be Concurred In As Amended. THE MOTION CARRIED WITH SENATOR TOWE VOTING NO AND SENATOR ROSKIE ABSENT.

There being no further business, the meeting adjourned to reconvene April 1, 1977.

Thomas E. Towe

Thomas E. Towe, Chairman

ROLL CALL

Natural Resources COMMITTEE

45th LEGISLATIVE SESSION - - 1977 Date 3/5/77

NAME	PRESENT	ABSENT	EXCUSED
Senator Thomas E. Towe, Chrm.	X		
Senator Pete Story, V. Chrm.	X		
Senator Bob Brown	X late		
Senator A.T. "Tom" Rasmussen	X		
Senator George F. Roskie			X
Senator John W. Devine	X		
Senator Greg Jergeson	X		
Senator Chet Blaylock	X		

Each day attach to minutes.

STANDING COMMITTEE REPORT

April 1 19 77

MR. President

We, your committee on State Administration

having had under consideration House Bill No. 795

Respectfully report as follows: That House Bill No. 795,
third reading, be amended as follows:

1. Amend page 3, section 2, line 24.
Following: "duty,"
Insert: "malfeasance or misfeasance in office, violation of his oath of office,"
Following: "a"
Strike: "crime"
Insert: "offense"

2. Amend page 4, section 4, line 11.
Following: "ten-percent-("
Strike: "10%"
Insert: "7 1/2%"

3. Amend page 4, section 4, line 16.
Following: "least"
Strike: "15%"
Insert: "12%"

XXXXXXX

Chairman.

STATE PUB. CO.
Helena, Mont.

4. Amend page 4, section 4, line 19.
Following: "fifteen-percent-("
Strike: "15%"
Insert: "12%"

5. Amend page 4, section 4, line 25.
Following: "twenty-percent-("
Strike: "20%"
Insert: "15%"

AND AS SO AMENDED, BE CONCURRED IN

April 5, 1977

SENATE
COMMITTEE OF THE WHOLE

That House Bill No. 795 be amended as follows:

1. Amend Senate Standing Committee amendment no. 1.
Strike: amendment no. 1 in its entirety

2. Amend page 3, section 2, line 24.
Following: "conviction of"
Insert: "malfeasance or misfeasance in office, violation of his oath of office or"
Following: "a"
Strike: "crime"
Insert: "felony offense"

3. Amend Senate Standing Committee amendments no. 2 through 5.
Strike: amendments no. 2 through 5 in their entirety

HOUSE BILL NO. 795

INTRODUCED BY BARDANOUVE, MELOY, SCULLY

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE MONTANA RECALL AND ADVISORY RECALL ACT, INITIATIVE NO. 73, TO CLARIFY THE SCOPE OF ITS APPLICATION, TO SPECIFY GROUNDS FOR RECALL, TO ESTABLISH MORE DEFINED RESPONSIBILITIES ON THE PART OF PETITIONERS, TO CORRECT AND CLARIFY CERTAIN ADMINISTRATIVE PROVISIONS OF THE ACT, TO REMOVE ADVISORY RECALL PROCEDURES FOR U. S. DISTRICT JUDGES, TO REMOVE THE APPLICATION OF THE ACT TO REPRESENTATIVES IN CONGRESS, TO CORRECT CERTAIN ERRORS IN FORM, AND TO REPEAL CONFLICTING STATUTES; AMENDING SECTIONS 1, 2, 4, 7, 8, 10, 11, 13, 15, 16, 17, AND 19 OF THE MONTANA RECALL AND ADVISORY RECALL ACT; AND REPEALING SECTIONS 11-721.1, 11-3132, 11-3220, AND 11-3540, R.C.M. 1947, AND SECTIONS 20, 21, 22, 23, AND 24 OF THE MONTANA RECALL AND ADVISORY RECALL ACT."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. There is a new R.C.M. section that reads as follows:

Definitions. As used in the Montana Recall Act, the following definitions apply:

(1) "Public office" means a position of duty, trust, or authority created by the constitution or by the legislature or by a political subdivision through authority conferred by the constitution or the legislature that meets the following criteria:

(a) the position must possess a delegation of a portion of the sovereign power of government to be exercised for the benefit of the public;

(b) the powers conferred and the duties to be discharged must be defined, directly or impliedly, by the constitution, the legislature, or by a political subdivision through legislative authority;

(c) the duties must be performed independently and without control of a superior power other than the law, unless the legislature has created the position and placed it under the general control of a superior office or body; and

(d) the position must have some permanency and continuity and not be only temporary or occasional.

(2) "Political subdivision" means a local government unit including but not limited to a county, city, or town established under authority of Article XI, section 1, of The Constitution of the State of Montana or a school district.

(3) "State-district" means a public service commission district, a legislative representative or senatorial district, or a judicial district.

Section 2. Section 1 of the Montana Recall and

Advisory Recall Act, Initiative No. 73, is amended to read as follows:

"Section 1. Short title. This act shall be ~~known and~~ cited as the "Montana Recall ~~And Advisory Recall~~ Act"."

Section 3. Section 2 of the Montana Recall and Advisory Recall Act, Initiative No. 73, is amended to read as follows:

"Section 2. Officers subject to recall. (1) Every person holding a public office of the state or any of its political subdivisions, either by election or appointment, is subject to recall from such office ~~by the qualified electors of the state or political subdivision~~.

(2) A public officer holding an elective office may be recalled by the qualified electors entitled to vote for his successor. A public officer holding an appointive office may be recalled by the qualified electors entitled to vote for the successor or successors of the elective officer or officers who have the authority to appoint a person to that position. ~~Any reason causing the electorate--dissatisfaction with--a--public--official--shall--be--sufficient grounds for recall, notwithstanding good faith attempts to--perform--the duties of his office.~~

(3) Physical or mental lack of fitness, incompetence, neglect of duty, ~~MALFEASANCE--OR--MISFEASANCE--IN--OFFICE, VIOLATION---OF---HIS---OATH--OF--OFFICE,~~ or conviction of

MALFEASANCE OR MISFEASANCE IN OFFICE, VIOLATION OF HIS OATH OF OFFICE OR a ~~crime~~ ~~OFFENSE~~ ~~CRIME~~ FELONY OFFENSE enumerated in Title 94 is the only basis for recall. No person may be recalled for performing a mandatory duty of the office he holds or for not performing any act that, if performed, would subject him to prosecution for official misconduct."

Section 4. Section 4 of the Montana Recall and Advisory Recall Act, Initiative No. 73, is amended to read as follows:

"Section 4. Number of electors required for recall petition. A recall petition ~~shall~~ may not name more than one officer to be recalled. Recall petitions for elected or appointed state officers shall contain the signatures of qualified electors equalling at least ~~ten percent (10%) 7 1/2%~~ 10% of the number of persons ~~voting~~ registered to vote at the preceding state general election. A petition for the recall of a state district officer must contain the signatures of qualified electors equalling at least ~~15% 12%~~ 15% of the number of persons registered to vote in the last preceding election in that district. Recall petitions for elected or appointed county officers shall contain the signatures of qualified electors equalling at least ~~fifteen percent (15%) 12%~~ 15% of the number of persons ~~voting~~ registered to vote at the preceding county general election.

Recall petitions for elected or appointed officers of ~~cities, towns,~~ municipalities or ~~other political subdivisions of the state~~ school districts shall contain the signatures of qualified electors equalling at least ~~twenty percent (20%)~~ ~~15%~~ 20% of the number of persons ~~voting~~ registered to vote at the preceding general election for the ~~city, town~~ municipality or ~~other political subdivision~~ school district."

Section 5. Section 7 of the Montana Recall and Advisory Recall Act, Initiative No. 73, is amended to read as follows:

"Section 7. Form of recall petition. (1) The form of the recall petition shall be substantially as follows:

WARNING

A person who knowingly signs a name other than his own to this petition or who signs his name more than once upon a petition to recall the same officer at one election or who is not, at the time he signs this petition, a qualified elector of the state of Montana entitled to vote for the successor of the elected officer to be recalled or the successor or successors of the officer or officers who have the authority to appoint a person to the position held by the appointed officer to be recalled is punishable by a fine of no more than $500 or imprisonment in the county jail for a term not to exceed 6 months, or both, or imprisonment in

the state prison for a term not to exceed 10 years, or both.

RECALL PETITION

To the Honorable ....., Secretary of State ~~for~~ of the State of Montana (or name and office of other filing officer)~~,~~: We, the undersigned ~~citizens and~~ qualified electors of the State of Montana (or name of appropriate state district or political subdivision) respectfully ~~demand~~ petition that an election be held as provided by law on the question of whether ....., holding the office of ....., should be recalled for the following reasons~~, to wit~~: (Setting out a general statement of the reasons for recall in not more than 200 words). ~~That a special election therefore be called; that we, each for himself, say,~~ By his signature each signer certifies: I have personally signed this petition; I am a qualified elector of the ~~State~~ state of Montana ~~for~~ and (name of appropriate political subdivision); and my residence and post office address are correctly written after my name to the best of my knowledge and belief.

~~A recall petition shall contain a general statement of not more than two hundred (200) words stating the reason for recall. Such a statement is solely for information of the electors and set forth any reason causing the dissatisfaction with the public official and may be political rather than legal in nature.~~

(2) Numbered lines shall follow the above heading. Each numbered line shall contain spaces for the signature, post-office address, and printed last name of the signer. Each separate sheet of the petition shall contain the heading and reasons for the proposed recall as prescribed above."

Section 6. Section 8 of the Montana Recall and Advisory Recall Act, Initiative No. 73, is amended to read as follows:

"Section 8. Form of circulation sheets. (1) The signatures on each petition shall be placed on sheets of paper known as "circulation sheets"~~, substantially fourteen inches long and eight and one-half inches wide~~. Each circulation sheet shall be substantially 8 1/2 x 14 inches or a continuous sheet may be folded so as to meet this size limitation. Such circulation sheets shall be ruled with a horizontal line one and one-half inches from the top thereof. The space above such line shall remain blank and shall be for the purpose of binding. ~~The circulation sheet shall be vertically divided into two columns. The first column shall be three and one-half inches in width, measured from the left edge of the sheet, and shall be for the purpose of containing the signatures. The second column shall encompass the remainder of the width of the sheet and shall be the space on which shall be placed the post office~~

~~address of the signers, together with the street number if the residence of a signer can be so designated, and the address of such signer shall be opposite his name on the same line.~~

~~At the top of each sheet, under the one and one-half inch margin, shall be printed the word "Warning", under which shall be printed in eight point type, single leaded, the following:~~

~~Warning~~

~~Any person signing any name other than his own to this petition or signing the same more than once of the same measure at one election or who is not, at the time of signing the same, a qualified elector of the state, is punishable by a fine not exceeding five hundred dollars ($500) or imprisonment in the penitentiary not exceeding two (2) years, or both such fine and imprisonment.~~

(2) The petition, for purposes of circulation, may be divided into sections, each section to contain not more than ~~twenty five~~ 25 circulation sheets. ~~No section, however, shall be circulated for signatures unless it has attached to the front sheet thereof a certified petition copy. The sponsors shall set out in their application for petition copies the number of sections into which each petition is to be divided for circulation, and the number of circulation sheets which it is desired that each section shall contain,~~

~~but there need be no uniformity as to the number of circulation sheets contained in each section.~~

(3) Before a petition may be circulated for signatures, a sample circulation sheet must be submitted to the officer with whom the petition must be filed in the form in which it will be circulated. The filing officer shall review the petition for sufficiency as to form and approve or reject the form of the petition, stating his reasons therefor, within 1 week of receiving the sheet.

(4) The petition form submitted must be accompanied by a written statement containing the reasons for the desired recall as stated on the petition. The truth of purported facts contained in the statement shall be sworn to by at least one of the petitioners before a person authorized to administer oaths.

(5) The filing officer shall serially number all approved petitions continuously from year to year."

Section 7. Section 10 of the Montana Recall and Advisory Recall Act, Initiative No. 73, is amended to read as follows:

"Section 10. Who may petition -- false signatures -- penalties. Every person who is a qualified elector of this state may sign a petition for recall of a state officer. Every person who is a qualified elector of a district of the state from which a state-district officer is elected may

sign a petition for recall of a state-district officer of that district or appointed by an officer or the officers of that election district. Every person who is a qualified elector of a political subdivision of this state may sign a petition for recall of an officer of that political subdivision. However, if a political subdivision is divided into election districts, a person must be a qualified elector in the election district to be eligible to sign a petition to recall an officer elected from that election district. Any person signing any name other than his own to any petition, or knowingly signing his name more than once for the recall, or who is not at the time of the signing ~~the same~~ a qualified elector or any ~~officer or~~ person who knowingly ~~and wilfully violating any provision of this section, shall be punished by a fine not to exceed Five Hundred Dollars ($500), or by imprisonment in the state penitentiary not to exceed Two (2) years, or by both.~~ makes a false entry upon an affidavit required in connection with the filing of a petition for the recall of an officer is guilty of unsworn falsification or tampering with public records or information, as appropriate, and is punishable as provided in 94-7-204 or 94-7-209, as applicable."

Section 8. There is a new R.C.M. section that reads as follows:

Submission of circulation sheets -- certification of

signatures. (1) Signed circulation sheets or sections of a petition for recall must be submitted to the officer responsible for registration of electors in the county in which the signatures were obtained within 3 months of the date the form of the petition was approved under [section 8 of the Montana Recall Act, as amended].

(2) An affidavit, in substantially the following form, shall be attached to each circulation sheet or section submitted to the county officer:

(Name of person circulating petition), being first sworn, deposes and says: I circulated or assisted in circulating the petition to which this affidavit is attached, and I believe the signatures thereon are genuine, are the signatures of the persons whose names they purport to be, and that the signers knew the contents of the petition before signing the same.

..... (Signature)

Subscribed and sworn before me this .... day of ....., 19...

..... (Person authorized to take oaths)

Seal ..... (Title or notarial information)

Section 9. Section 11 of the Montana Recall and Advisory Recall Act, Initiative No. 73, is amended to read as follows:

"Section 11. County clerk to verify signatures. (1)

The county clerk in each county in which such a petition is signed shall compare the signatures of the electors in such county with registration signatures on file in such clerk's office, and, if satisfied the signatures are genuine, certify that fact to the ~~official~~ officer with whom the recall petition ~~was~~ is to be filed, ~~as follows~~ in substantially the following form:

~~State of Montana)~~

~~: ss~~

~~County of)~~

To the Honorable ....., Secretary of State of the State of Montana (or name and title of other officer):

I, ..., ~~Clerk in and for~~ ..... (title) of ..... County ~~do hereby~~ certify that I have compared the signatures on ..... sheets (specifying number of sheets) of the petition for recall No. ..... attached ~~hereto~~ with the signatures of the registered voters as they appear upon the registration ~~forms, books and~~ records of my office, and ~~from such information as I have been able to~~ obtain I believe the ..... (number) signatures, ~~numbering .....~~ are genuine valid for the purpose of the petition. ~~As to the remainder of the signatures thereon, I believe they are not genuine, except that the following names (.....) do not appear on the registration forms, books and records in my office.~~

~~.....County Clerk~~

~~(Seal of Office)~~ ~~By.....~~

~~Deputy Clerk~~

I further certify that the affidavit of the circulator of the (sheet) (section) of the petition is attached and that the post-office address is completed for each valid signature.

Signed: ..... (Date) ..... (Signature)

Seal ..... (Title)

(2) Every such certificate shall be prima facie evidence of the facts stated therein and of the qualifications of the registered voters whose signatures are certified, and the secretary of state, or other ~~official~~ officer receiving the recall petition shall consider and count only such signatures as are certified; provided, that the ~~secretary of state, or city clerk or town clerk~~ officer with whom the recall petition is filed shall consider and ~~county~~ count any remaining signatures of the registered voters which prove to be genuine and such signatures shall be considered and counted if they are attested to in the manner and form as provided for initiative and referendum petitions.

(3) The county clerk ~~shall~~ may not retain any petition or any part of it for more than ~~fifteen (15)~~ days. At the expiration of such period the county clerk shall deliver the

same to the person ~~from whom it was received with such clerk's certification~~ with whom the petition is required to be filed."

Section 10. Section 13 of the Montana Recall and Advisory Recall Act, Initiative No. 73, is amended to read as follows:

"Section 13. Resignation of ~~official~~ officer -- proclamation of election. If the officer named in the petition for recall submits his resignation in writing ~~such officer's resignation~~, it shall be accepted and become effective the day it is offered. The vacancy created by such resignation shall be filled as provided by law, provided that the ~~official~~ officer named in the petition for recall ~~shall~~ may not be appointed to fill such vacancy. If the officer named in the petition for recall refuses to resign or does not resign within ~~five (5)~~ days after the petition is filed, a special election shall be ~~proclaimed~~ called unless the filing is within ~~ninety (90)~~ days of a general election, in which case the question shall be placed on ~~the general election ballot~~ a separate ballot at the same time as the general election. The ~~proclamation~~ call of a special election shall be made by the governor in the case of a state or state district officer ~~and~~ or by the board or ~~official~~ officer empowered by law to ~~proclaim~~ call special elections for ~~the~~ a political subdivision in the case of any

officer of a political subdivision of the state."

Section 11. Section 15 of the Montana Recall and Advisory Recall Act, Initiative No. 73, is amended to read as follows:

"Section 15. Notice of a recall election. ~~Shall Be In The Following Form:~~ The notice of a recall election shall be in substantially the following form:

NOTICE OF RECALL ELECTION

Notice is hereby given pursuant to law that a recall election will be held on ~~the ..... day of ..... 197....~~ ..... (Date) for the purpose of voting upon the recall of ..... who holds the office of .....

DATED at ....., ~~the ..... day of ..... 197....~~ ..... (Date)"

Section 12. Section 16 of the Montana Recall and Advisory Recall Act, Initiative No. 73, is amended to read as follows:

"Section 16. Form of ballot. (1) The ballot at such recall election ~~shall be entitled "Recall Ballot", and~~ shall set forth the statement contained in the recall petition stating the reasons for demanding the recall of such officer and the officer's statement of reasons why he should not be recalled. ~~Following the statements shall be printed the following instructions to the voters: "To vote on the recall, mark a cross (X) in the square at the right of yes~~

~~or no" and immediately thereunder the question "Shall ..... (naming the officer) be recalled", and immediately to the right of such question shall be printed the words "yes" and "no" not less than three-sixteenths (3/16) of an inch in height, and at the right of each word a square shall be printed on the ballot in which the voter may indicate such voter's preference.~~ Then the question of whether the officer should be recalled shall be placed on the ballot in a form similar to the following:

FOR recalling ..... who holds the office of .....

AGAINST recalling ..... who holds the office of .....

(2) The form of the ballot shall be approved as provided in the election laws of this state."

Section 13. Section 17 of the Montana Recall and Advisory Recall Act, Initiative No. 73, is amended to read as follows:

"Section 17. Officer to remain in office until results declared -- filling of vacancy. The officer named in the recall petition ~~for recall shall continue~~ continues in office until he resigns or the results of the ~~special~~ recall election are officially declared. If a majority of those voting on the question vote to remove the officer, ~~then~~ the office ~~shall become~~ becomes vacant and the vacancy shall be

filled as provided by law, provided that the officer recalled ~~shall~~ may in no event be appointed to fill the vacancy."

Section 14. Section 19 of the Montana Recall and Advisory Recall Act, Initiative No. 73, is amended to read as follows:

"Section 19. Expenses of election. Expenses of a recall election ~~for a state officer~~ shall be paid ~~from the funds of the state, and expenses of a recall election for an officer of a political subdivision of the state shall be paid from the funds of such subdivision~~ in the same manner as the expenses for any other election. The expenditure of such funds constitutes an emergency expenditure of funds, and the political subdivision affected may fund the costs of such an election through emergency funding procedures. In the event a recall election is held for a state or state district officer, the legislature shall appropriate funds to reimburse the counties involved for costs incurred in running the election."

Section 15. Repealer. Sections 11-721.1, 11-3132, 11-3220, and 11-3540, R.C.M. 1947, and sections 20, 21, 22, 23, and 24 of the Montana Recall and Advisory Recall Act are repealed.

-End-